



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2012-0761; FRL-9909-86-Region 8]

Approval and Promulgation of State Implementation Plan Revisions; Revisions to the Air Pollution Control Rules; North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the Governor of North Dakota on April 14, 2011. The revisions affect North Dakota's air pollution control rules regarding general provisions, ambient air quality standards (sulfur dioxide (SO₂), nitrogen dioxide (NO_x), and lead), and permitting. EPA acted separately on other provisions in the April 14, 2011 submittal related to North Dakota's regulation of greenhouse gases (GHGs) under its Prevention of Significant Deterioration (PSD) program. This action is being taken under section 110 of the Clean Air Act (the Act or CAA).

DATES: This final rule is effective [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2012-0761. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Gail Fallon, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6281, Fallon.Gail@epa.gov.

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Definitions

For the purpose of this document, the following definitions apply:

- (i) The words or initials Act or CAA mean or refer to the Federal Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection

Agency.

- (iii) The initials GHG mean or refer to greenhouse gases.
- (iv) The initials NAAQS mean or refer to the National Ambient Air Quality Standards.
- (v) The initials NDAC mean or refer to North Dakota Administrative Code.
- (vi) The initials NDDH mean or refer to the North Dakota Department of Health.
- (vii) The initials NESHAP mean or refer to National Emissions Standards for Hazardous Air Pollutants.
- (viii) The initials NO_x mean or refer to nitrogen oxides.
- (ix) The initials NPR mean or refer to notice of proposed rulemaking.
- (x) The initials NSPS mean or refer to New Source Performance Standards.
- (xi) The initials NSR mean or refer to New Source Review.
- (xii) The initials PM_{2.5} mean or refer to fine particulate matter.
- (xiii) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (xiv) The initials SIP mean or refer to State Implementation Plan.
- (xv) The initials SO₂ mean or refer to sulfur dioxide.
- (xvi) The words State or North Dakota mean the State of North Dakota, unless the context indicates otherwise.

I. Background

On February 25, 2014 (79 FR 10448), EPA published a notice of proposed rulemaking (NPR) for the State of North Dakota. The NPR proposed approval of several revised Air Pollution Control Rules in the North Dakota SIP. The revisions to the State rules became effective on April 1, 2011. The formal SIP revision was submitted by the State of North Dakota

on April 14, 2011. The SIP revision involves the following chapters of the North Dakota Administrative Code (NDAC): 33-15-01, “General Provisions,” 33-15-02, “Ambient Air Quality Standards,” and 33-15-14, “Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V permit to Operate.” We previously acted on the revisions to NDAC 33-15-15, “Prevention of Significant Deterioration of Air Quality” in the April 14, 2011 submittal regarding regulation of GHGs and fine particulate matter (PM_{2.5}) under North Dakota’s PSD program on October 23, 2012 (77 FR 64734). The revisions affect North Dakota’s air pollution control rules regarding general provisions, ambient air quality standards (SO₂, NO_x, and lead), and permitting. More background for today’s final rule and our rationale for approval are discussed in detail in our proposal (see 79 FR 10448, February 25, 2014). The comment period for the proposal was open for 30 days and ended on March 27, 2014. We received no comments. Accordingly, we are finalizing our actions as proposed.

II. Analysis of SIP Revisions

We are approving the April 14, 2011 submittal for numerous straightforward SIP revisions to NDAC Chapters 33-15-01, 33-15-02, and 33-15-14. Additional revisions to NDAC Chapter 33-15-14 for the State’s minor source permitting program required more in-depth analysis regarding the State’s revisions to sections 33-15-14-01 and 33-15-14-02. The revisions to Chapter 33-15-14 changed the permitting requirement for sources subject to a new source performance standard (NSPS) or national emission standard for hazardous air pollutant (NESHAP). Previously, the SIP-approved minor source permit rule required any source subject to an NSPS or NESHAP to obtain a permit from the State regardless of the quantity of source emissions. The North Dakota Department of Health (NDDH) has changed the rule so the permit

requirement only applies to sources subject to a state-adopted NSPS or NESHAP. The State made this change to avoid the burden of permitting the numerous oil and gas facilities that became subject to the newly promulgated federal NSPS at 40 CFR part 60, subpart OOOO (Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution). The effect of these revisions is the State, by not adopting subpart OOOO into State law (and with no intention to adopt it in the future) will not have to permit the sources subject to subpart OOOO. Instead, the State will continue to rely on an existing exemption for oil and gas production operations at subsection 33-15-14-02.13.o and the State's oil and gas registration program at Chapter 33-15-20. The sources the State intends to continue to exclude from permitting include the multitude of small units, such as tanks, engines, and other oil and gas production related units that would have otherwise been subject to the State's minor New Source Review (NSR) permit program. State permitting requirements aside, national emissions standards in any NSPS or NESHAP including 40 CFR part 60, subpart OOOO still apply to the subject sources. The revisions related to NSPS and NESHAP permitting result in a relaxation of North Dakota's SIP since now a narrower subset of minor sources subject to NSPS and NESHAP requirements (only those sources subject to NSPS and NESHAP requirements that are adopted by the State) are subject to permitting. In the analysis in our proposal, EPA acknowledged that North Dakota approached this current SIP revision in a prospective manner, revising its rules prior to EPA issuing the subpart OOOO requirements. However, EPA continues to work actively with North Dakota to ensure the stringency of North Dakota's minor NSR permit program is maintained and meets all applicable requirements with respect to oil and gas operations in the State.

CAA section 110(l) requires a demonstration that a SIP revision does not interfere with any requirement concerning attainment and that a relaxation is sufficiently protective of air quality and other CAA requirements in order for EPA to approve the relaxation. EPA conducted such a demonstration for the permitting rule revision in the April 2011 submittal finding the revisions are not presently interfering with the State's SIP control strategy or causing national ambient air quality standards (NAAQS) violations in North Dakota. Our demonstration is included in the docket for this action.

III. Final Action

EPA is approving revisions to the North Dakota SIP that the Governor of North Dakota submitted with a letter dated April 14, 2011 and that were State-effective April 1, 2011. Specifically, EPA is approving North Dakota's revisions to the following portions of the North Dakota Administrative Code: Chapter 33-15-01, "General Provisions," section 33-15-01-04.52, Chapter 33-15-02, "Ambient Air Quality Standards," sections 33-15-02-04.1, 33-15-02-07.1, 33-15-02-07.2, 33-15-02-07.3, 33-15-02-07.4, and section 33-15-02, Tables 1 and 2. EPA is approving Chapter 33-15-14, "Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate," sections 33-15-14-01.9, 33-15-14-01.10, 33-15-14-01.12, 33-15-14-01.15, 33-15-14-02.1, 33-15-14-02.13, 33-15-14-02.13.o, and 33-15-14-03.1c. EPA will continue discussions with the State to clarify and strengthen the State's current minor source permit program as it relates to oil and gas production facilities. Our proposed action provides a description of these revisions. See 79 FR 10448, February 25, 2014. EPA acted previously on the revisions to Chapter 33-15-15, "Prevention of Significant

Deterioration of Air Quality,” that were also included in the April 14, 2011 submittal. See 77 FR 64734, October 23, 2012.

IV. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action

must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 9, 2014.

Howard M. Cantor
Acting Regional Administrator
Region 8

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart JJ – North Dakota

2. Section 52.1820, the table in paragraph (c) is amended as follows:

- a. By revising the table entries for “33-15-01-04”, “33-15-02-04”, “33-15-02-07”, and “33-15-02, Table 1”;
- b. By removing the table entry for “33-15-02-07.3, 33-15-02-07.4, and 33-15-02, Table 2”;
- c. By adding the table entry for “33-15-02, Table 2” in numerical order;
- d. By revising the table entries for “33-15-14-01” and “33-15-14-02”;
- e. By adding the table entries for “33-15-14-02.1”, and “33-15-14-02.13 and Subsection o.” in numerical order; and
- f. By revising the table entries for “33-15-14-03” and “33-15-14-03.1.c”.

The revisions and additions read as follows:

§ 52.1820 Identification of plan.

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(c) * * *

State citation	Title/subject	State effective date	EPA approval date and citation ¹	Explanations
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33-15-01-04	Definitions	4/1/11	[Insert Federal Register date of publication], [Insert Federal	

			Register page number where the document begins.]	
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33-15-02-04	Ambient air quality standards	4/1/11	[Insert Federal Register date of publication], [Insert Federal Register page number where the document begins.]	
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33-15-02-07	Concentrations of air contaminants in the ambient air restricted	4/1/11	[Insert Federal Register date of publication], [Insert Federal Register page number where the document begins.]	
33-15-02, Table 1	Ambient Air Quality Standards	4/1/11	[Insert Federal Register date of publication], [Insert Federal Register page number where the document begins.]	
33-15-02, Table 2	National Ambient Air Quality Standards	4/1/11	[Insert Federal Register date of publication], [Insert Federal Register page number where the document begins.]	
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33-15-14-01	Designated air contaminant sources	4/1/11	[Insert Federal Register date of publication], [Insert Federal Register page	

			number where the document begins.]	

33-15-14-02	Permit to construct	4/1/11	[Insert Federal Register date of publication], [Insert Federal Register page number where the document begins.]	Excluding subsections 1, 12, 13, 3.c, 13.b.1, 5, 13.c, 13.i(5), 13.o, and 19 (one sentence) which were subsequently revised and approved. See below. See additional interpretive materials cited in 57 FR 28619, 6/26/92, regarding the State's commitment to meet the requirements of EPA's "Guideline on Air Quality Models (Revised)."
33-15-14-02.1	Permit to construct required	4/1/11	[Insert Federal Register date of publication], [Insert Federal Register page number where the document begins.]	

33-15-14-02.13 and Subsection o	Exemptions	4/1/11	[Insert Federal Register date of publication], [Insert Federal	

			Register page number where the document begins.]	
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33-15-14-03	Minor source permit to operate	4/1/11	[Insert Federal Register date of publication], [Insert Federal Register page number where the document begins.]	Excluding subsections 10, 1.c, 4, 5.a(1)(d), 11, and 16 (one sentence) which were subsequently revised and approved. See below. Also see 40 CFR 52.1834
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33-15-14-03.1.c	Permit to operate required	4/1/11	[Insert Federal Register date of publication], [Insert Federal Register page number where the document begins.]	
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¹In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.

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